IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.877 OF 2003

Chandrappa Bapu Patil
(since deceased through L.Rs)
Dinkar Chandrappa Patil and Ors. ...Appellants

vs.

Pandu @ Ramu Chandrappa Patil ...Respondent

Mr.A.P.Kulkarni h/f Mr.A.A.Kumbhakoni for the Appellants
Mr.D.S.Sawant for the Respondent.

CORAM: A.S.OKA, J.
DATED: JULY 20, 2006.

P.C.:

1. Heard Shri Kulkarni for the Appellants and Shri Sawant for the Respondent.

2. The learned Counsel for the Appellants submitted that the Trial Court did not frame proper issues. He pointed out that the main contention of the Appellants was that the original Plaintiff was not related to the original Defendant No.1 in any manner. He submitted that as the proper issues were not famed, prejudice has been caused to the Appellants. He submitted that the only documentary evidence produced by the original Plaintiff is the birth extract which is not duly proved. He, therefore, submitted that the impugned Judgments and Decrees are perverse.

3. I have considered the submissions. The First Appellate

Court has noted the contention of the Appellants that prejudice was caused to the Respondent as proper issues were not framed. However, the first Appellate Court has found that the parties were fully aware about the controversy involved in the suit. The parties have led evidence on relationship between the Plaintiff and the Defendants. The first Appellate Court, in my view, has rightly came to the conclusion that no prejudice has been caused to the either parties due to failure to frame the proper issues. Apart from the birth extract relied upon by the Plaintiff, the courts below have considered the evidence of witness Dhondi Subhana Chougale who was 80 years old and evidence of Tanubai who was 78 years old. After appreciating the evidence, the courts below have recorded a finding of fact that the mother of the Plaintiff Sakhubai was the legally wedded wife of the first Defendant and the Plaintiff is the legitimate son of the said Defendant. After having perused the findings recorded by the courts below, I find no error in the said findings.

4. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.